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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) NO. CR 16-00519-LHK
Plaintiff,) UNITED STATES' PROPOSED VOIR DIRE
v.) Pretrial Conference:
JOHNNY RAY WOLFENBARGER,) February 5, 2020
Defendant.) Time: 9:15 a.m.
) Trial: March 17, 2020
) The Hon. Lucy H. Koh

The government submits the following proposed voir dire questions, with the suggestion that the Court address these questions to the jury pool, and permit counsel to do brief follow-up questioning as appropriate. The government respectfully reserves its right to modify and supplement this list of proposed voir dire questions if necessary based on pretrial developments.

I. Practical Considerations

1. Would you have any difficulty serving as a juror on a trial that could last until approximately April 1, 2020?
 2. Are there circumstances currently in your life that may make it difficult for you to concentrate fairly on the trial proceedings in this case?
 3. Do you have any difficulty understanding the English language? Do you have any difficulty reading the English language?
 4. Do you have any hearing or eyesight problems that might make it difficult for you to follow along with the evidence in this case?

II. Knowledge of Defendants, Counsel, Witnesses, and Case

5. Do you know or have you heard of the Defendant Johnny Ray Wolfenbarger?
 6. Do you know or have you heard of counsel in this case: Marissa Harris and Jeff Nedrow for the United States, Graham Archer and Severa Keith for Defendant Johnny Ray Wolfenbarger?
 7. Do you know or are you familiar with any of the following individuals who may be witnesses in this case? [The Court is respectfully requested to read the parties' witness lists.]
 8. This case relates to Defendant's alleged attempt to produce child pornography, attempt to coerce and entice minors, and receipt of child pornography. Outside of the information you have received in connection with your jury service, does anyone think he or she might have knowledge regarding the facts of this case?

For example, has anyone read any news coverage regarding this case?

III. Attitude Toward Law Enforcement and Criminal Justice System

9. [If you like, you may approach sidebar to answer the following questions regarding involvement with law enforcement] Have you, any member of your immediate family, or any close friend ever had any contact with any law enforcement officer more significant

than a routine traffic stop?

a. If so, do you think the law enforcement officer acted professionally and fairly?

10. Have you ever been convicted of a crime?

11. Do you believe that you or anyone you personally know has ever been falsely arrested or
5 wrongly charged with a crime?

12. Have you, any member of your family, or any close friend ever worked in law
enforcement or in the criminal justice system (e.g., police officer, prosecutor, probation
officer, defense lawyer, defense investigator)?

9 a. Is there anything about that experience or association that would cause you to lean
10 in favor of either the Government or the Defendant in this case?

11 13. Would you automatically view a government agency witness as more credible or less
12 credible than a witness who was not associated with a government agency, or are you
13 able to assess each witness's credibility based on the evidence at trial?

14 14. Is anyone of the opinion that the criminal justice system is fundamentally unfair in some
15 way?

16 IV. Experience With Child Exploitation Issues

17 15. Have you, a family member, or a close friend ever been the victim of sexual assault or
18 molestation, or any kind of sexual exploitation?

19 16. Have you, a family member, or a close friend ever been accused of sexual assault or
20 molestation, or any kind of sexual exploitation? If yes, do you believe you or the person
21 was treated fairly, and the matter was handled appropriately by the authorities?

23 17. Have you ever known anyone who you thought was falsely accused of sexual assault or
24 molestation, or of any kind of sexual exploitation?

25 18. Would the fact that this case involves charges of sexual exploitation of children and
26 receiving and possessing child pornography prevent you from rendering a fair and
27 impartial verdict?

1 19. Is there any reason why you cannot be fair and impartial in a case involving child
2 pornography and child sexual abuse allegations?

3

4 **V. Experience with the Philippines**

- 5 20. Has anyone visited or previously resided in the Philippines?
6 21. Does anyone have family members or friends in the Philippines with whom you
7 communicate or send money?
8 22. Has anyone used Western Union, or another wire transfer service to send money to the
9 Philippines, or anywhere else outside of the United States?

10 **VI. Application of the Law / Punishment and Sympathy**

- 11 23. Do you understand that as a juror you must accept and apply the law as it is explained to
12 you by the Court, even if you believe the law is or should be different?
13 a. Do you have any difficulty with this concept that would prevent you from serving
14 as an impartial juror in this case, which involves sexual exploitation of children
15 and receipt of child pornography?
16 24. In a criminal case, the government has the burden of proving the defendant is guilty
17 beyond a reasonable doubt. The law does not require the government to prove its case
18 beyond all doubt. Would any of you feel that the government should be required to prove
19 its case beyond all doubt before you would vote for a verdict of guilty?
20 25. The jury's role is to decide guilt; the jury does not determine the sentence. Do you
21 understand that you should not speculate about the possible punishment if the defendant
22 is found guilty? Will you be able to perform your duty to follow the law and decide
23 whether the defendant is guilty without regard to the possible consequences?
24 26. Do any of you have any moral, religious, philosophical, or political principles that make
25 you reluctant to serve on a jury in a criminal case? Would any of those principles make it
26 difficult or impossible for you to judge a fellow citizen?
27 a. Do any of you hold any principles that would cause you to refuse to vote to
28 convict a person regardless of whether you felt the evidence proved the

1 defendants are guilty beyond a reasonable doubt?

2 **VII. Concluding Questions**

3 27. After hearing what you have heard about this case, can you think of any reasons we have
4 not yet discussed that might prevent you from serving as a fair and impartial juror in this
5 case?

6 28. Is there any matter any juror would prefer to discuss privately with the Court?

7
8 DATED: January 29, 2020

9 Respectfully submitted,

10 DAVID L. ANDERSON
11 United States Attorney

12 _____ /s/ _____

13 MARISSA HARRIS
14 JEFFREY D. NEDROW
15 Assistant United States Attorneys